



No. 19

May 6, 2003

Treaty Doc. 108-04 — Protocols to the North Atlantic Treaty of 1949 on Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia

Executive Calendar No. 6

Reported from the Committee on Foreign Relations on April 30, 2003, by a vote of 19-0, with a resolution of advice and consent to ratification, subject to 9 declarations and 3 conditions. Exec. Rept. 108-06.

NOTEWORTHY

- Pursuant to an unanimous consent agreement reached Monday, May 5, the Senate will proceed to consideration of Treaty Document 108-04 on Wednesday, May 7 at a time to be determined. There will be four hours of debate, equally divided. A Warner/Levin/Roberts amendment and a Dodd amendment are the only first-degree amendments in order, and second-degree amendments to the Warner et al. and Dodd amendments are permitted. [For more information on the amendments and their time agreements, see pp. 10-11 of this Notice.] Upon the disposition of the amendments and the use or yielding back of time, the Treaty will be set aside, and a vote on passage will occur Thursday, May 8, at a time to be determined.
- Treaty Document 108-04 is a resolution of ratification giving the Senate's advice and consent to the ratification of the modifications of the North Atlantic Treaty of 1949 to include Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia as members of the NATO alliance.
- Acceptance of the seven new members requires the assent of all 19 current member states of the alliance. To date, Canada and Norway have ratified the amended treaty.
- Under Article II, section 2, of the U.S. Constitution, the Senate must give its advice and consent to treaties made by the Executive Branch before the United States incurs binding obligations. Two-thirds of Senators present and voting must agree to approve the resolution of ratification.

- The Foreign Relations Committee unanimously recommends the Senate give its advice and consent to the ratification of the modification of the North Atlantic Treaty of 1949, subject to the nine declarations in section 2 and the three conditions in section 3 [for details, see pp. 6-8 of this Notice].
- The resolution of ratification includes

Nine declarations stating the Senate’s position regarding NATO’s importance as a vital national security interest of the United States; the strategic rationale for NATO enlargement; full membership for the new NATO members; the importance of European integration; the consideration of future candidates for NATO membership; the importance of the Partnership for Peace program; the role of the NATO-Russia Council; compensation for victims of the Holocaust and of communism; and the principles of treaty interpretation; and

Three conditions to the Senate’s advice and consent (which are binding on the United States but not on other NATO members) regarding cost, benefits, burdensharing, and military implications of NATO enlargement; reports on intelligence matters; and the accounting for captured and missing U.S. personnel from the Cold War era.

- The Committee’s report includes detailed analyses of the declarations and conditions, as well as the view of the Committee on Armed Services.

BACKGROUND

The North Atlantic Treaty Organization (NATO) was established in 1949 as an alliance for common self-defense among democratic, free-market countries in Europe and North America in response to the Soviet occupation and communization of most of Central and Eastern Europe at the end of World War II. This mission of the alliance — and its key defining principle — is stated in Article 5 of the North Atlantic Treaty, NATO’s founding document, as follows:

“The Parties [i.e., the member states] agree that an armed attack against one or more of them . . . shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.”

The original members were the United States, Canada, the United Kingdom, France, Belgium, the Netherlands, Portugal, Denmark, Norway, Luxembourg, Iceland, and Italy. The alliance was enlarged on three separate occasions during the Cold War — to include Greece and Turkey in 1952, the Federal Republic of Germany in 1955, and Spain in 1982. NATO’s founding purpose was to

deter the Soviet Union and its satellites from an attack on non-communist Europe — an attack that would threaten the security of the United States — and, if deterrence failed, to achieve victory. And, although the threat of a Soviet attack no longer exists, the need for NATO to remain a collective defense organization and as the formal U.S. channel for transatlantic security dialogue continues to be warranted.

With the collapse of the Soviet Union and the reestablishment of democracies in Central and Eastern Europe, the need to enlarge the Alliance to provide security and stability in Europe became evident. In 1998, the Czech Republic, Hungary, and Poland became the first former Warsaw Pact countries to formally join NATO. The enlargement of NATO is permitted by Article 10 of the North Atlantic Treaty, which states that “the Parties may, by unanimous agreement, invite any other European state in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area to accede to this Treaty.”

In November 2002, the North Atlantic Council — NATO’s decision-making body — extended invitations to seven new and restored democracies in Central and Eastern Europe to begin negotiations for admission as new members of the alliance: Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia. This is the second time in a decade that the Alliance agreed to enlarge and welcome nations from territories formerly occupied by the Soviet Union. (Note: The Senate last offered its advice and consent to modify the 1949 North Atlantic Treaty on April 30, 1998, when it approved, by a vote of 80-19, the resolution of ratification for the Czech Republic, Hungary, and Poland to join the alliance. The three Protocols entered into force on December 4, 1998.)

On March 26, 2003, the Protocols to the North Atlantic Treaty on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia were opened for signature at Brussels. The protocols were signed that day on behalf of the United States and the other parties to the North Atlantic Treaty.

With the negotiations for a revised NATO treaty completed in March 2003, the protocols were submitted to national legislatures for ratification. To date, Canada and Norway have approved the revisions. Although NATO is an alliance of equals, it is generally understood that the decision of the United States Senate will be the key to whether the expansion proceeds as planned.

On April 10, 2003, Treaty Document 108-04 was received in the Senate and referred to the Committee on Foreign Relations. On April 30, 2003, the Committee on Foreign Relations reported the ratification of the modification of the North Atlantic Treaty of 1949 to the full Senate favorably with a recommended resolution of ratification (see Exec. Report 108-6 for committee action).

During the past year, the U.S. Congress has twice expressed its support for both NATO and for the enlargement of the Alliance to include more qualified nations from Central and Eastern Europe. On May 17, 2002, the Senate passed the Freedom Consolidation Act, S.1572. The House passed an identical bill, H.R. 3167, on November 7, 2001. The Freedom Consolidation Act reaffirmed Congress’ support for the continued enlargement of NATO and endorsed the U.S. vision of future enlargements as articulated by both the Clinton and Bush Administrations during the past decade. President Bush signed the Freedom Consolidation Act on June 10, 2002.

In November, 2002, the House passed the Transatlantic Security and NATO Enhancement Resolution, H. Res. 468. The resolution provided the Members of the House of Representatives an

opportunity to offer their support for NATO as an institution as well as for the process of enlargement. Among the key points of the legislation, the resolution affirmed the importance of the North Atlantic Treaty Organization as the key institution for the U.S. to engage its European allies in security dialogue and cooperation; supported continued United States participation in NATO; declared that Alliance members should strengthen their capabilities to respond to new threats; required that the enlargement of NATO proceeds in a manner consistent with United States interests; called for NATO to continue to develop relations with Russia; and expressed a Sense of the House of Representatives that NATO should extend invitations to Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia to join the alliance.

Items for Discussion

During the last round of debate on NATO enlargement in 1998, the Senate held numerous hearings on issues such as the costs of enlarging NATO, adaptation of NATO's mission to a post-Cold War environment, and the impact of enlargement on NATO-Russia relations. The debate over how much enlargement would cost the U.S. and its allies was important because estimates of the expected costs varied widely from a few billion dollars during a ten year period to as much as \$125 billion. However, the most intense debate focused on two issues: whether NATO enlargement would incense Russia as its former Warsaw Pact members were incorporated into NATO; and whether the Alliance had a mission in the post-Cold War era, and if so, what the roles and missions of NATO were. Additional debate focused on whether NATO should consider out-of-area operations, how to bring about greater burdensharing among the members, and when the next round of enlargement would begin (or whether it would take a "strategic pause").

The product of the debate during the last round of enlargement resulted in seven declarations and four conditions being included in the resolution of ratification. The declarations stated the Senate's position regarding NATO's importance as a vital national security interest of the United States; the strategic rationale for NATO enlargement; the supremacy of the North Atlantic Council in NATO's decision-making; full membership for the new NATO members; the NATO-Russia relationship; the importance of European integration; and consideration of future candidates for NATO membership. The conditions to the Senate's advice and consent regarded NATO's strategic concept, the cost, benefits, burdensharing, and military implications of NATO enlargement, the NATO-Russia Founding Act and the Permanent Joint Council, and the principles of treaty interpretation.

It is expected that debate on this round of candidates will focus on some of the same issues, such as: burdensharing; military implications of enlargement; the role of Russia with NATO; the future of the "open door" policy; and NATO's overall mission in the post-Cold War era, including conducting out-of-area operations. Additional debate may address the timing of the next round of enlargement; the overall status of U.S.-European relations; the role of NATO in Afghanistan and in post-Hussein Iraq; and the redistribution of U.S. troops in Europe.

Since the fall of the Berlin Wall and the collapse of Communism, these seven countries have maintained close ties with the United States and the Alliance, involving themselves in NATO's

Partnership for Peace Program (PFP), as well as contributing combat forces and support services to U.S. and NATO-led operations in Bosnia, Kosovo, Afghanistan, and most recently, Iraq. Following the terrorist attacks of September 11, 2001 against the United States, NATO invoked, for the first time in history, Article 5, thus stating that Al Qaeda's attack against America was an attack against the Alliance. Although not full members of the Alliance, each of the seven candidate countries declared their solidarity with the United States. The seven new and restored democracies of Central and Eastern Europe have demonstrated great willingness to join the Alliance and have an impressive understanding of the obligations associated with being a member of the Article 5 organization.

Since the last round of enlargement the seven NATO candidates have continued to reform their economies, militaries, and political systems, have held free and fair elections, have peacefully transferred power from one leader to the next, and have spent, in most cases, nearly the same percentage of annual GDP on defense spending as current NATO member states. Since 1994, Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia have been active members in NATO's PFP program, allowing their militaries to interact in both dialogue and exercises with U.S. and NATO troops. Since 1999, the seven candidates have been engaged in NATO's Membership Action Plan (MAP), which allows NATO candidate countries to submit an annual report to Brussels on how each respective aspirant is reforming to meet NATO's military, economic, legal, and political requirements. MAP allows the aspirants an opportunity to receive feedback from Brussels in helping to determine their priorities.

As a testament to the quality and scope of reforms undertaken during the past decade, in February, 2003, five of the current NATO candidates — Estonia, Latvia, Lithuania, Slovakia, and Slovenia — along with the three newest NATO members — Czech Republic, Hungary, and Poland — were invited to begin accession talks with the European Union. According to the European Commission, the Accession Treaty must be ratified by the 25 present and future Member States of the European Union and will enter into force on May 1, 2004.

Lastly, within months of coming into office, President Bush declared his Administration's support for the continuation of the "open door" policy and for the accession of these seven countries as well as other European nations to join the Alliance. The Bush Administration has been a consistent advocate in pushing for this round of enlargement.

Costs of NATO Enlargement

During the last round of NATO enlargement, significant debate centered around the cost of incorporating the Czech Republic, Hungary, and Poland into the Alliance. Cost estimates varied widely ranging from a high of \$61 billion to \$125 billion for the period of 1996 to 2010 (of which the United States' share would be some \$5 billion to \$19 billion), according to a 1996 CBO study—to a low of \$1.5 billion over 10 years (of which the United States' share would be about \$400 million), as calculated by NATO. In actuality, according to the current Committee report, "the cost of bringing in Poland, Hungary, and the Czech Republic appears to have been relatively modest." The Committee

finds that after their admission to NATO, “Poland, Hungary, and the Czech Republic began making payments into NATO’s three common budgets and the prorated contributions of the other member states fell accordingly. The total U.S. share dropped by approximately one percent.”

Budget concerns and costs have not played a major role in the current debate regarding enlargement. As the committee notes in its report, the seven candidates present a different set of issues militarily than did the last round of members, including the need to modernize or, in some cases, build up from scratch, armed forces, develop lighter and more mobile troops, prepare for new, non-conventional, asymmetric threats, and provide to the Alliance new specialized capabilities. The candidates have been encouraged by the United States to spend at or near two percent of its respective Gross Domestic Product (GDP) on the defense budget. Lastly, as the committee states in its report, “rather than dollars and cents, policymakers have been focusing this time around on military capabilities” with an emphasis being placed not on how long it will take for new members to become interoperable with current NATO members but on what their militaries are able to offer to the Alliance in terms of being force contributors.

In its April 28, 2003 report to the Committee on Foreign Relations, the Congressional Budget Office estimates that integrating the seven candidate countries into NATO would cost the Alliance about \$2.7 billion over the 2004-2013 period; the U.S. share of that amount would be about \$650 million, or about twelve percent more than the United States would spend to support NATO’s common budget during that period. The CBO adds that the candidates could themselves incur significant costs to upgrade and modernize their militaries, and the United States may provide assistance, through foreign military financing, which would increase costs incurred by the United States. However, such costs may not be more than current levels of U.S. aid to those countries.

BILL PROVISIONS

Section 1. Senate Advice and Consent Subject to Declarations and Conditions.

This section consists of the Senate’s advice and consent to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia subject to the declarations in section 2 and the conditions in section 3.

Section 2. Declarations.

Declarations are statements of the Senate’s position, opinion, or intentions on matters relating to issues raised by a treaty but not to its specific provisions. Treaty Document 108-04 includes nine declarations, as follows:

1. The Senate declares that United States membership in NATO remains a vital national security interest of the United States.
2. The Senate states its findings regard the strategic rationale for NATO enlargement, including possible threats to the stability and territorial integrity of NATO members; the threat of an attack on Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia would constitute to member countries; the contribution those seven countries can make to the security of the North Atlantic area; and the enhancement their admission would have for the alliance.
3. The Senate states its understanding that the new members will have all the rights, obligations, responsibilities, and protections of alliance members.
4. The Senate states its sense regarding the important role that other European institutions such as the European Union and the Organization for Security and Cooperation in Europe must play to advance the political, economic, and social stability and integration of Europe.
5. The Senate finds that Article 10 of the North Atlantic Treaty provides that NATO maintain an “open door” policy for membership in the Alliance. In addition, NATO will continue to keep NATO aspirants such as Albania, Croatia, and the former Yugoslav Republic of Macedonia under review using the Membership Action Plan (MAP), implement the approved comprehensive package of measures based on the Strategic Concept to strengthen the Alliance’s ability to meet new challenges, create a new ‘NATO Response Force (NRF),’ streamline military command arrangements, approve the Prague Capabilities Initiative to develop new military capabilities for modern warfare, and examine means to address the threat of weapons of mass destruction to the Alliance.
6. The Senate declares that the Partnership for Peace (PFP) program is an important and enduring complement to NATO in maintaining and enhancing regional security and encouraging and strengthening political dialogue and military cooperation with NATO, and serves a critical role in promoting common objectives of NATO members and PFP countries.
7. The Senate declares that it is in the U.S. interest to continue to develop a new and constructive relationship with the Russian Federation, especially via the NATO-Russia Council established by NATO in May 2002, which allows Russia to participate in joint discussions and joint actions with NATO but not exercise a veto over NATO policy.
8. The Senate finds that individuals of and communities in Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, whose property was seized during the Holocaust or the communist period, should receive compensation.
9. The Senate reaffirms a provision of the 1990 Treaty on Conventional Armed Forces in Europe (CFE) limiting interpretation of the treaty. This declaration is based on what has come to be known as the “Byrd-Biden Condition” on treaty interpretation.

Section 3. Conditions.

Conditions are requirements placed on the President by the Senate as part of the Senate's advice and consent to ratification. They are binding on the United States but not on other treaty signatories. Treaty Document 108-04 includes three conditions, as follows:

1. The Senate requires the President to certify and report that the addition of seven new members will not result in an increase in the overall percentage share of the United States in the NATO common budgets, and that the addition of these seven countries will not detract from the ability of the United States to meet and fund its military requirements outside the North Atlantic area. Following the entry into force of the Protocols of Accession, the President shall submit to Congress a report on the costs, benefits, burden sharing, and the military implications of NATO enlargement. Lastly, before candidates are invited to the next round of enlargement, the President must submit to Congress a report on each candidate country's abilities to meet the full range of burdens and obligations required of full NATO membership.
2. The Senate requires the President to submit to Congress a report, no later than January 1, 2004, on the progress of the seven candidates in satisfying the security sector and security vetting requirements for NATO membership. The Director of Central Intelligence is also required to submit a report to Congress detailing the seven applicants' procedures and regulations for protecting intelligence sources and methods.
3. The Senate requires the President to certify that each candidate country's government is fully cooperating with U.S. efforts to obtain the fullest possible accounting of captured and missing U.S. personnel from past military conflicts or Cold War incidents.

ADMINISTRATION POSITION

At press time, no statement of administration policy had been received, but the Bush Administration is known to strongly favor approval of NATO enlargement.

In the Administration's April 10, 2003 request for Senate advice and consent for NATO enlargement, President Bush stated that Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovenia, and Slovakia are "already making real contributions to the common security of the NATO allies, including the United States," and that he is "firmly convinced that their full membership in NATO will strengthen our Alliance further."

OTHER VIEWS

View of the Senate Committee on Armed Services

On April 30, 2003, in a letter sent to the Committee on Foreign Relations, Senate Armed Services Committee Chairman Warner and Ranking Member Levin expressed their support for the enlargement of NATO to include Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia. However, the Armed Services Committee expressed some reservations about the direction of NATO as a whole, and provided the Foreign Relations Committee with the Armed Services Committee's recommendations on the matter of enlarging the NATO Alliance.

In the letter, the Armed Services Committee reaffirmed its view that "NATO remains, first and foremost, a military alliance — the most successful military alliance in history," but noted that its "enlargement by seven additional nations — the largest enlargement in Alliance history — could have dramatic implications for NATO's ability to function as an effective military organization." The Armed Services Committee's report highlights the following issues of concern: the role and mission of NATO in the post-Cold War era; military implications of an enlarged NATO; capabilities of both old and new members; costs; and reform to existing NATO decision making processes (see letter from Sen. Warner and Levin to Sen. Lugar in Exec. Report 108-6, pp. 64-69 for background).

The Armed Services Committee stated that to remain a viable military alliance, NATO must remain relevant to these current threats and current threats to NATO member nations do not come from NATO's periphery. Instead, the threats — such as terrorism and the proliferation of weapons of mass destruction — are "transnational in nature, and they emanate from regions outside of Europe." The Committee added that the Strategic Concept, adopted at the 50th Anniversary Summit held in 1999, envisioned "out of area" operations for NATO and specifically noted the emergence of non-traditional threats, including terrorism and the proliferation of weapons of mass destruction.

The Committee also noted that the seven aspirant countries have developed or are developing capabilities that will assist NATO as it engages in specialized theater and out-of-area operations. Specifically, the Committee stated that some candidates "already possess specialized capabilities that have served the alliance in the Balkan operations and in the global war on terrorism, including: special forces; nuclear, biological, and chemical defense; mountain fighting; and demining." In addition, the Committee found that each of the seven invitees has provided "direct military support for the global war on terrorism, acting as de facto allies by contributing transit and basing privileges, military and police forces, medical units, transport support to U.S. and coalition efforts, and/or overflight rights," and that "many of the invitees have participated in the International Security Assistance Force (ISAF) in Afghanistan, and contributed actively to NATO efforts to stabilize the Balkans."

To address additional concerns expressed by members of the Committee, Senators Warner and Levin requested that the Committee on Foreign Relations consider adding two conditions to the resolution of ratification:

- Requiring appropriate officials of the executive branch of government to place on the agenda of the North Atlantic Council the issue of the consensus rule as a means of streamlining NATO's decision-making processes for conducting military campaigns. The President is required to submit a report to the President of the Senate and the Speaker of the House no later than 180 days after the date of adoption of this resolution on the steps taken to place the issue of consensus rule on the North Atlantic Council's agenda as well as a description of how the Administration presented the issue and how the discussion ensued regarding the issue of consensus rule;
- Requiring appropriate officials of the executive branch of government to place on the agenda of the North Atlantic Council the issue of establishing a process for suspending the membership of a nation that is no longer upholding NATO principles. The President is required to submit a report to the President of the Senate and the Speaker of the House no later than 180 days after the date of adoption of this resolution on the steps taken to place the issue of consensus rule on the North Atlantic Council's agenda as well as a description of how the Administration presented the issue and how the discussion ensued regarding the issue of suspending membership.

The Committee included in its letter a response from U.S. Undersecretary of State Marc Grossman who, along with U.S. Ambassador to NATO Nicholas Burns, raised these issues with NATO allies. According to the Armed Services Committee, Secretary Grossman expressed that "there was no support from NATO members for amending the Treaty on either the consensus rule or the question of expulsion." In addition, Secretary Grossman underscored his belief, shared by Ambassador Burns, that "the consensus rule works more in the U.S. favor than against it, and that compromise and persuasion, and use of the Defense Planning Committee, remain effective tools to enable NATO action today." Lastly, Secretary Grossman noted that "NATO has ways other than expulsion to deal effectively with allies that 'go bad,' for instance by isolating them or excluding them from sensitive NATO discussions."

POSSIBLE AMENDMENTS

As agreed upon by unanimous consent, two first-degree amendments are in order, as are second-degree amendments to them. Senators Warner, Levin, and Roberts have proposed an amendment requiring the President to place on the agenda of the North Atlantic Council the issues of consensus rule and establishing a process for suspending the membership in NATO of a member country that fails to hold the principles of NATO (see letter from Senator Warner and Levin to Senator

Lugar in Exec. Report 108-6, pp. 64-69 for background). Both provisions would be a radical departure from the traditional procedures followed within NATO, and, more importantly, both provisions require unanimous approval from all the members' national legislatures. The Administration opposes the amendments. NATO Secretary General Robertson has also expressed opposition to the amendments. The Warner/Levin/Roberts amendment will have 90 minutes of debate time.

The second amendment in order is a Dodd amendment on administrative processes, with 60 minutes available for debate. No formal language had been received as of press time.

As information about these amendments is made available, summaries will be provided.
